

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 18-XXX

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY  
UTILITIES

Petition for Expansion of Franchise to the Town of Epping  
and Waiver of the Tariff Filing Requirements Pursuant to Puc 1603.02(a)

**Motion for Protective Order**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of customer information contained within the DCF analysis, Confidential Attachment WJC/MES-6.

In support of this motion, Liberty represents as follows:

1. Liberty's petition in this docket requests the franchise rights to provide natural gas service to the Town of Epping.
2. Liberty included in its filing a discount cash flow (DCF) analysis, Confidential Attachment WJC/MES-6, which demonstrates that the proposed development in Epping will be a net benefit to Liberty's customers.
3. Confidential Attachment WJC/MES-6 includes the identity of potential commercial customers in Epping and their estimated gas usage.

4. Customer identity is information that must be protected from public disclosure, RSA 363:37 and RSA 363:38, and is thus “confidential, commercial, or financial information” that is exempt from disclosure pursuant to RSA 91-A:5, IV.
5. Pursuant to *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See, e.g., Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011).
6. The first step is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, the second step asks whether there is a public interest in disclosure to further the policy objective of informing the public of the conduct and activities of its government. Otherwise, public disclosure is not warranted. *Public Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two steps are met, the Commission then weighs the importance of keeping the record public against the harm that may flow from disclosure. *Id.* at 3-4.
7. Commission rules cite RSA 91-A:5 as the authority under which parties may seek confidential treatment: “The commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law ....” Puc 203.08(a). RSA 91-A:5, IV, specifically exempts from public disclosure records that constitute “confidential, commercial, or financial information.” The Legislature has established another “applicable law,” RSA 363:37 and RSA 363:38 which specifically directs utilities to maintain the confidentiality of customer identities. And the Commission has ruled that customer information constitutes “confidential,

commercial, or financial information.” *EnergyNorth Natural Gas, Inc.*, Order No. 25,208 (Mar. 3, 2011). Thus, there is a privacy interest that would be invaded by disclosure, satisfying the first step of the *Lambert* analysis.

8. The second step is to determine whether there is a public interest in disclosure that would inform the public of the Commission’s conduct and activities in this docket, that is, “about what [the] ‘government is up to.’” *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 476 (1996). The information from Confidential Attachment WJC/MES-6 that is relevant and important in this docket is the existence of the potential customers and their projected load – not their identities. The specific identities of these customers is irrelevant to the Company’s financial analysis, and will similarly be irrelevant to the Commission’s review of these projections. Disclosure of this potential customer information will not inform the public about the Commission’s activities.
9. Since there are valid privacy interests at stake and essentially no valid public interest in disclosure of this customer information, the Commission may grant this motion and not conduct the balancing test under the third step of the *Lambert* test.
10. Even if the Commission weighed confidentiality against public disclosure in this case, the strong protection afforded to customer information clearly outweighs the minimal benefit that disclosure would provide in understanding the Commission’s work in this docket. Again, the motion should be granted.
11. For these reasons, Liberty asks that the Commission issue a protective order preventing the public disclosure of the customer information contained within Confidential Attachment WJS/SEM-6.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,  
Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a  
Liberty Utilities

By its Attorney,



Date: December 24, 2018

By: \_\_\_\_\_  
Michael J. Sheehan, Esq. #6590  
116 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
Michael.Sheehan@libertyutilites.com

Certificate of Service

I hereby certify that on December 24, 2018, a copy of this Motion has been forwarded to the Office of Consumer Advocate.



\_\_\_\_\_  
Michael J. Sheehan